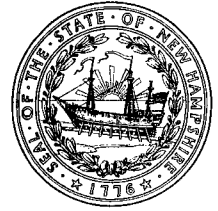




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Donald A. Boyer
62 Hot Hole Pond Road
Concord, New Hampshire 03301

Re: Hot Hole Pond
Concord, NH

**ADMINISTRATIVE ORDER
No. WD 05-16**

May 19, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Donald A. Boyer pursuant to RSA 485-A:22 and RSA 482-A:6 and RSA 483-B. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, NH.
2. Donald A. Boyer is an individual having a mailing address of 62 Hot Hole Pond Road, Concord, New Hampshire 03301.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
3. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

4. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

5. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.

6. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.

7. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.

8. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.

9. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.

10. RSA 483-B:9,V(a)(2)(A) requires that, "Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose within a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place."

11. Donald Boyer is the owner of property located at 62 Hot Hole Pond in Concord, NH, more particularly identified on City of Concord Tax Maps as Map 120, Block 1, Lot 30 ("the Property").

12. Administrative Order No. WD 00-73 was issued to Steven R. and Debra J. Rattee, the previous owners, on December 21, 2000. Administrative Order No. WD 00-73 was recorded with the Merrimack County Registry of Deeds on December 29, 2000 in Book 2237, Page 1288, "so as to run with the land."

13. The violations cited on Administrative Order No. WD 00-73 included:

- a. Terrain alteration in excess of 100,000 square feet without a permit from DES;
- b. Failure to stabilize areas within the construction site;
- c. Failure to install erosion control measures on the Property;
- d. Failure to control the flow of sediment off-site;
- e. Failure to stabilize the construction site entrance; and,
- f. Failure to maintain the driveway culvert at the entrance to the site.

14. The Administrative Order ordered Steven R. and Debra J. Rattee as follows:
 - a. Install erosion control measures on the Property;
 - b. Stabilize disturbed soils on the Property;
 - c. Submit an erosion and sediment control plan for the Property; and,
 - d. Submit an application for a Site Specific Permit for review by DES.
15. Steven R. and Debra J. Rattee did not comply with Order.
16. Mr. Boyer purchased the Property on November 1, 2002 from Steven R. and Debra J. Rattee.
17. On July 7, 2003 Mr. Boyer contacted DES regarding the Order. He was informed that the Order was still in effect and that compliance with the Order would be required before the Order could be released.
18. On January 27, 2005, DES was notified by officials of the City of Concord that activities had taken place on the Property that might be in violation of RSA 483-B.
19. On February 3, 2005, DES personnel visited the site but were unable to conduct a thorough inspection of the site because of snow cover and frozen conditions.
20. On April 21, 2005, DES personnel conducted an inspection of the Property. During the inspection DES personnel observed the following:
 - a) The original violations, which were the subject of Administrative Order No. WD 00-73, had not been corrected;
 - b) Additional alteration of terrain had taken place on the Property (approximately 20,000 square feet);
 - c) A well distributed stand of vegetation was not maintained along approximately 220 feet of the shoreline and within 150 feet of the reference line to Hot Hole Pond;
 - d) More than 50 percent of the basal area of standing trees was removed within 150 feet of the reference line to Hot Hole Pond;
 - e) Construction of an access roadway leading down to within approximately 50 feet of the reference line to Hot Hole Pond has impacted approximately 5,500 square feet of forested wetlands;
 - f) A stockpile of waste was present on the Property, including construction debris (bricks, pieces of concrete, asphalt shingles), scrap metal, large pieces of road asphalt.

D. DETERMINATION OF VIOLATIONS

1. Donald A. Boyer has violated RSA 485-A:22 by failing to comply with Administrative Order No. WD 00-73.

2. Donald A. Boyer has violated RSA 485-A:17 by altering an additional 20,000 square feet of terrain without a permit from DES.
3. Donald A. Boyer has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install appropriate erosion control measures on the Property.
4. Donald A. Boyer has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to properly stabilize areas of disturbed soils within the Property.
5. Donald A. Boyer has violated RSA 482-A:3, I by placing fill in wetlands, located on the Property without a permit from DES.
6. Donald A. Boyer has violated RSA 483-B:9, V(a)(2)(A) by removing more than 50 percent of the basal area of trees and 50 percent of the total number of saplings from the natural woodland buffer on the property.
7. Donald A. Boyer has violated RSA 483-B:9V(a)(2)(A) by failing to maintain a healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems within the natural woodland buffer.

E. ORDER

Based on the above findings, DES hereby orders Donald A. Boyer as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize exposed soils on the Property pursuant to this Order.
2. **Within 10 days of the date of this Order**, prepare a temporary erosion control plan ("Temp Plan") for the Property, including measures necessary to stabilize the exposed soils on the Property so as to prevent any impacts to surface waters. Submit said Temp Plan to DES for approval. The Plan shall include a schedule for implementing the Temp Plan.
3. Implement the approved Temp Plan on the Property according to the schedule detailed in the Temp Plan.
4. **Within 30 days of the date of this Order**, submit to DES for review and approval a restoration plan for the restoration of the wetlands and the natural woodland buffer. The restoration plan shall be prepared by a certified wetland scientist, and shall include:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with wetland boundaries delineated in accordance with Section F of the Army Corps of Engineers Wetlands Delineation Manual (January 1987) where necessary, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;

- c. A detailed description of the proposed plantings for the stabilization and revegetation of the wetland restoration and for the reestablishment of the natural woodland buffer and basal area within 150 feet of the reference line of Hot Hole Pond;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on September 15, 2005, and September 15, 2006.
5. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item 4 above and to submit the restoration progress reports.
6. Implement the restoration plan in accordance with Item 4 above only after receiving written approval and as conditioned by DES.
7. **Within 60 days of the date of this Order**, submit an application for a Site Specific permit to DES for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
8. Submit the temporary erosion control plan, the wetlands and shoreland restoration plan, and the completed Site Specific application, correspondence, data, and reports made in connection with this Order, **other than appeals**, to DES as follows:

Ana Herrero, Compliance Specialist
Land Resources Management
DES Water Division
29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determinations D.5 of this Order may request DES to reconsider those determinations within 20 days from the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal determination D.5 to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Any person aggrieved by determinations D.1 through D.4, and D.6 and D. 7 of this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, 29 Hazen

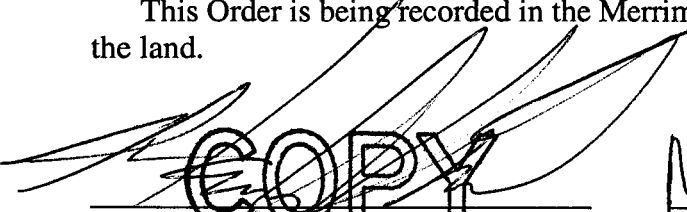
Drive, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Filing an appeal or request for reconsideration of the Order will not automatically relieve the Donald A. Boyer of his obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13, 482-A:14 and RSA 483-B:18 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Responsible Parties remain obligated to comply with all applicable requirements. DES will continue to monitor the Responsible Parties' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



COPY
Harry T. Stewart, P.E., Director
Water Division



COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail RRR 7099 3400 0002 9774 7176

cc: Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Merrimack County Registry of Deeds
Tracey Boisvert, Senior Enforcement Officer, DES Wetlands
Jeff Blecharczyk, Shoreland Compliance Specialist, DES
Real Mongeau, DES Subsurface Systems Bureau
Concord Planning Board
Concord Conservation Commission